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Attorney for Plaintiffs

**UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF CALIFORNIA**

GABRIELLE NIMTZ; NAOMI NIMTZ,
 a minor by her Guardian ad Litem,
 GABRIELLE NIMTZ; ADRIANNA
 NIMTZ, a minor by her Guardian ad
 Litem, GABRIELLE NIMTZ; DANIEL
 JENSEN, a minor by his Guardian ad
 Litem, GABRIELLE NIMTZ

 Plaintiffs,

 v.

 CITY OF SAN DIEGO; SAN DIEGO
 POLICE DEPARTMENT; SAN DIEGO
 POLICE OFFICER VAN CLEEF; SAN
 DIEGO POLICE SERGEANT ANNING;
 CHIEF OF POLICE WILLIAM
 LANSLOWNE, DOES 1-20, inclusive.

 Defendants.

No. '10CV2166 H WMc

COMPLAINT FOR DAMAGES

1. Violation of Civil Rights
 (42 U.S.C. §1983)
2. *Monell Claim*
 (42 U.S.C. §1983)
3. Assault and Battery
4. False Arrest
5. Conspiracy
6. Torts in Essence
7. Intentional Infliction of
 Emotional Distress
8. Negligence
9. Negligent Employment
10. Banes Civil Rights Claim

DEMAND FOR JURY TRIAL

JURISDICTION

Jurisdiction of this court is invoked under 28 U.S.C. §§ 1343, (1), (2), (3) and (4).
 This action at law for money damages arises under Title 42 U.S.C. Section 1983 and
 the United States Constitution, the laws of the State of California and common law

principles to redress a deprivation under color of state law of rights, privileges and immunities secured to Plaintiffs by said statutes, and by the First, Fourth, and Fourteenth Amendments of the United States Constitution.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. At all times herein mentioned, Plaintiffs GABRIELLE NIMTZ, NAOMI NIMTZ, a minor by her Guardian ad Litem GABRIELLE NIMTZ, ADRIANNA NIMTZ, a minor by her Guardian ad Litem GABRIELLE NIMTZ, DANIEL JENSEN, a minor by his Guardian ad Litem GABRIELLE NIMTZ, were residents of the County of San Diego, California.

2. At all times herein mentioned, Defendants SAN DIEGO POLICE OFFICER VAN CLEEF ("VAN CLEEF"), individually and as a peace officer, SAN DIEGO POLICE SERGEANT ANNING ("ANNING"), and DOES 1-20 were and are employees of the City of San Diego and/or the San Diego Police Department.

3. Defendant CITY OF SAN DIEGO, (hereinafter referred to as "CITY") is and at all times herein mentioned has been a public entity and an incorporated city duly authorized and existing as such in and under the laws of the State of California; and at all times herein mentioned, Defendant CITY has possessed the power and authority to adopt policies and prescribe rules, regulations and practices affecting the operation of the San Diego Police Department, and particularly said Department's Patrol, Internal Investigations and Training and Personnel Divisions and other operations and subdivisions presently unidentified to Plaintiffs, and their tactics, methods, practices, customs and usages.

4. Defendant CHARLES LANSDOWNE is the Chief of Police of Defendant CITY OF SAN DIEGO, and agent of Defendant CITY OF SAN DIEGO. Plaintiffs are informed and believe and based upon that allege that Defendant LANSDOWNE is responsible for implementing, maintaining, sanctioning, or condoning policies, practices, and customs, under which the other Defendants

1 committed illegal or wrongful acts that are complained of in this lawsuit. By reason
2 of these policies, practices, and customs, Defendant LANSDOWNE is liable for the
3 damages that resulted.

4 5. Plaintiffs are informed and believe and thereon allege that each of the
5 Defendants designated as a DOE is intentionally responsible in some manner for the
6 events and happenings herein referred to, and thereby proximately caused injuries and
7 damages as herein alleged. The true names and capacities of DOES 1 through 20,
8 inclusive, and each of them, are not now known to Plaintiff who therefore sues said
9 Defendants by such fictitious names and will be added to this action as provided by
10 California Code of Civil Procedure Section 484.

11 6. Defendants, and each of them, did the acts and omissions hereinafter
12 alleged in bad faith and with knowledge that their conduct violated well established
13 and settled law.

14 7. The incidents complained of began in the City of San Diego, on
15 August 30, 2009 on which date Defendant VAN CLEEF and DOES 1-5, maliciously,
16 forcibly and unlawfully entered Defendant GABRIELLE NMITZ's house without a
17 warrant, consent or exigent circumstances, and assaulted, battered, seized and arrested
18 Plaintiff GABRIELLE NMITZ, in the presence of her minor daughters NAOMI and
19 ADRIANNA NMITZ, frightening and alarming the minors. Plaintiff GABRIELLA
20 NMITZ appealed to Defendant VAN CLEEF and DOES 1-5 to intervene and put an
21 end to VAN CLEEF's abusive conduct. Plaintiff GABRIELLE NMITZ was
22 handcuffed and arrested and taken in a radio car against her will to Los Colinas
23 Detention jail without her consent and without just cause. She was prosecuted for
24 resisting arrest and disturbing the peace. Plaintiff GABRIELLE NMITZ's three minor
25 children, plaintiffs ADRIANNA, NAOMI and DANIEL NMITZ, were taken by Child
26 protective Services to the Polinsky Center, where they were separate from their
27 mother, their legal guardian, their friends, and were terrified, scared and worried.

1 8. Plaintiff GABRIELLE NMITZ was falsely arrested for vandalism
2 (Penal Code sec. 594) and resisting arrest (Penal Code sec. 148). Defendants prepared
3 reports which they knew were false, and maliciously manufactured in defense of
4 Defendants wrongful conduct.

5 9. Upon her release from jail, Plaintiff GABRIELLE NMITZ
6 complained to Defendant SERGEANT ANNING that not only did officers enter her
7 home illegally, batter and assault her, and falsely arrest her without a warrant, exigent
8 circumstances or consent, they also failed to secure her home which, as a result, was
9 burglarized.

10 10. In an effort to conceal this unlawful conduct, DOES 1-5 fabricated a
11 crime and arrest report in which they falsely reported GABRIELLE NMITZ had had
12 violated Penal Code section 594 and 148.

13 11. Upon being informed of Plaintiff GABRIELLE NMITZ'S accusations
14 against VAN CLEEF, ANNING and DOES 1-5, an administrative investigation was
15 not commenced. Said failure to carry out the complaint investigation violated City of
16 San Diego official regulations and California Penal Code section 832.5 and was not
17 conducted so to exonerate VAN CLEEF and ANNING and Does 1-5 from all
18 wrongdoing notwithstanding the fact that the investigation disclosed VAN CLEEF,
19 ANNING and DOES 1-5 had violated the law, department policy and the plaintiffs
20 constitutional rights.

21 **FIRST CAUSE OF ACTION**

22 **42 U.S.C. § 1983 VIOLATION OF CIVIL RIGHTS - ILLEGAL ENTRY,**
23 **EXCESSIVE FORCE, FALSE ARREST, AND CONSPIRACY TO DEPRIVE**
24 **CIVIL RIGHTS**

25 **(By Plaintiff GABRIELLE NMITZ Against All Individual Defendants)**

26 12. Plaintiffs refer to and replead each and every allegation contained in
27 paragraphs 1 through 11 of this complaint, and by this reference incorporates the
28 same herein and makes each a part hereof.

1 13. This action at law for money damages arises under Title 42 U.S.C. §
2 1983 and the United States Constitution, the laws of the State of California and
3 common law principles to redress a deprivation under color of state law of rights,
4 privileges and immunities secured to Plaintiffs by said statutes, and by the First,
5 Fourth, and Fourteenth Amendments of the United States Constitution.

6 14. Commencing at or about the aforementioned dates and places, without
7 cause or justification, and acting under color of law, Defendant VAN CLEEF and
8 DOES 1-20, and each of them, intentionally and maliciously deprived Plaintiff of
9 rights secured to him by the First, Fourth, and Fourteenth Amendments to the United
10 States Constitution. Defendants subjected plaintiff to unlawful entry of her premises,
11 excessive and unreasonable force and to an unlawful arrest and booking, conspired
12 together to justify the unlawful uses of force, illegal detentions and arrest of the
13 plaintiff and thereby deprive plaintiff of rights secured to him by the federal
14 constitution.

15 15. Defendants, and each of them, carried out and perpetrated the mutually
16 supportive conspiracy to deprive Plaintiff of her rights against unreasonable searches
17 and seizures, due process, by participating in a corrupt effort to conceal the violation
18 of plaintiff's rights with manufactured facts supported by defendants.

19 16. As a proximate result of the aforesaid acts and omissions of Defendants,
20 and each of them, Plaintiffs sustained great physical and mental pain and shock to his
21 nervous systems, fear, anxiety, torment, degradation and emotional distress.

22 17. By reason of the aforementioned acts and omissions of Defendants, and
23 each of them, Plaintiff incurred medical and therapeutic expenses in an amount as
24 proved.

25 18. By reason of the aforementioned acts of Defendants, and each of them,
26 Plaintiff was compelled to secure the services of an attorney at law to redress the
27 wrongs hereinbefore mentioned and by virtue thereof, Plaintiff is indebted and liable
28 for attorneys fees.

19. The aforementioned acts and omissions of Defendants were committed by each of them knowingly, wilfully and maliciously, with the intent to harm, injure, vex, harass and oppress Plaintiff with a conscious disregard of Plaintiff's constitutional rights and by reason thereof, Plaintiff seeks punitive and exemplary damages from Defendants, and each of them, (except Defendant CITY) in an amount as proved.

SECOND CAUSE OF ACTION

UNLAWFUL CUSTOM AND PRACTICE UNDER SECTION 1983 (By Plaintiff GABRIELLE NMITZ Against Defendant City and LANSLOWNE

20. Plaintiffs refer to and replead each and every allegation contained in paragraphs 1 through 19 of this complaint, and by this reference incorporates the same herein and makes each a part hereof.

21. Defendant CITY is and at all times herein mentioned has been a public entity and an incorporated municipality duly authorized and existing as such in and under the laws of the State of California; and at all times herein mentioned, Defendant CITY is possessed of the power and authority to adopt policies and prescribe rules, regulations and practices affecting the operation of the SAN DIEGO POLICE DEPARTMENT and its tactics, methods, practices, customs and usages related to internal investigations, personnel supervision and records maintenance, and the proper uses of force by its rank and file, generally.

22. At all times herein mentioned, Defendants VAN CLEEF, ANNING and DOES 1-20, and each of them, were employees of the City of San Diego and San Diego City Police Department acting under the CITY'S and CHIEF LANSLOWNE's direction and control, knowingly and intentionally promulgated, maintained, applied, enforced and suffered the continuation of policies, customs, practices and usages in violation of the First, Fourth, and Fourteenth Amendments respectively to the United States Constitution, which customs, policies, practices and usages at all times herein mentioned encouraged (1) the employment, deployment and retention of persons as

1 peace officers who have a propensity for brutality, dishonesty, bigotry, and numerous
2 other serious abuses of their duties as peace officers in the employment of the CITY.

3 23. Defendant CITY knowingly maintains and permits official *sub-rosa*
4 policies or customs of permitting the occurrence of the kinds of wrongs set forth
5 above, by deliberate indifference to widespread police abuses, failing and refusing to
6 fairly and impartially investigate, discipline or prosecute peace officers who commit
7 acts of felonious dishonesty and crimes of violence, each ratified and approved by the
8 CITY.

9 24. The unconstitutional policies, practices or customs promulgated,
10 sanctioned or tolerated by defendant CITY include, but are not limited to:

11 (1) Defendant CITY had knowledge, prior to and since this
12 incident, of repeated allegations of abuse and assaultive misconduct
13 toward detainees and arrestees; Specifically, CITY knew Defendant
14 VAN CLEEF and other officers had committed numerous violations of
15 the law under color of law and demonstrated VAN CLEEF's unfitness
16 for employment as a peace officer but refused to protect public safety
17 and that of the Plaintiffs by failing to discharge and prosecute VAN
18 CLEEF and DOES 1-20. CITY knew SAN DIEGO PD officers
19 including VAN CLEEF, DOES 1-20 and others had in the past and since
20 Plaintiffs incident, committed similar acts of official dishonesty,
21 corruption and abuse of persons similarly situated to the plaintiffs;

22 (2) Defendant CITY had knowledge, prior to and since this
23 incident, of similar allegations of abuse and dishonesty by Defendants,
24 and refused to enforce established administrative procedures to insure
25 the safety of detainees and arrestees;

26 (3) Defendant CITY refused to adequately discipline individual
27 officers and employees found to have committed similar acts of abuse and
28 misconduct;

1 (4) Defendant CITY refused to competently and impartially
2 investigate allegations of abuse and misconduct alleged to have been
3 committed by San Diego police officers;

4 (5) Defendant CITY reprimanded, threatened, intimidated,
5 demoted and fired officers who reported acts of abuse by other officers;

6 (6) Defendant CITY covered up acts of misconduct and abuse
7 by SAN DIEGO Police Department officers and sanctioned a code of
8 silence by and among officers;

9 (7) Defendant CITY knew of and sanctioned the custom and
10 practice of falsely arresting, booking and charging victims of officer
11 physical abuse with violations of California Penal Code Sections 69,
12 243, 245, 148 , 415 and 647(f).

13 (8) Defendant CITY failed to adequately train and educate
14 officers in the use of reasonable and proper force and failed to enforce
15 the department's written regulations with respect to uses of force;

16 (9) Defendant CITY failed to adequately supervise the actions
17 of officers under their control and guidance;

18 (10) Defendant CITY condoned and participated in the practice
19 of prosecuting groundless criminal charges for the purpose of insulating
20 the CITY of SAN DIEGO and its officers from civil liability and
21 reducing or dismissing criminal charges against individuals in return for
22 releasing them from civil liability;

23 (11) Defendant CITY condones and encourages a conspiracy of silence
24 among its employees for the purpose of concealing and furthering wrongful
25 and illegal conduct by its employees;

26 (12) Defendant CITY engages in the custom and practice of
27 refusing to provide public prosecutors and criminal defendants
28 exculpatory and impeaching evidence as required by law.

(13) Defendant CITY fostered and encouraged an atmosphere of lawlessness, abuse and misconduct, which by August 30, 2009 and thereafter, represented the unconstitutional policies, practices and customs of the CITY and SAN DIEGO POLICE DEPARTMENT.

25. By reason of the aforesaid policies, customs, practices and usages, plaintiffs First, Fourth, and Fourteenth Amendments to the United States Constitution were violated.

THIRD CAUSE OF ACTION

ASSAULT AND BATTERY

(By Plaintiff GABRIELLE NMITZ against Defendants CITY, VAN CLEEF, and DOES 1-20)

26. Plaintiffs refer to and replead each and every allegation contained in paragraphs 1 through 25 of this complaint, and by this reference incorporates the same herein and makes each a part hereof.

27. At the aforementioned date, time and place, Defendants VAN CLEEF, DOES 1-20 and each of them, assaulted and battered Plaintiff GABRIELLE NMITZ.

28. By reason of the acts aforesaid, Plaintiff was placed in great fear for her safety and physical and emotional well being.

29. As a direct and proximate result of the foregoing, Plaintiff has been damaged as recited above and demands and is entitled to the damages recited in the First Cause of Action, including, but not limited to, general and punitive damages (except as to Defendant CITY).

FOURTH CAUSE OF ACTION

FALSE ARREST

(By Plaintiff GABRIELLE NMITZ Against Defendants CITY, VAN CLEEF, DOES 1-20)

30. Plaintiff refers to and repleads each and every allegation contained in paragraphs 1 through 29 this complaint, and by this reference incorporates the same herein and makes each a part hereof. On or about August 30, 2009 in the City of San Diego, California, Plaintiff was caused to be unlawfully seized and arrested by

1 Defendants, and each of them, maliciously and without warrant or order of
2 commitment or any other legal authority of any kind as plaintiff had not committed
3 any crime or public offense.

4 31. As a proximate result of the acts of defendants, and all of them, Plaintiff
5 suffered damages, loss and harm.

6 32. As a direct and proximate result of the foregoing, Plaintiff has been
7 damaged as recited above and demands and is entitled to the damages recited in the
8 First Cause of Action, including, but not limited to, general and punitive damages
9 (except as to Defendant CITY).

10 **FIFTH CAUSE OF ACTION**

11 **CIVIL CONSPIRACY**

12 **(By Plaintiff GABRIELLE NMITZ Against All Defendants)**

13 33. Plaintiffs refer to and replead each and every allegation contained in
14 paragraphs 1 through 32 of this complaint, and by this reference incorporates the
15 same herein and makes each a part hereof.

16 34. Commencing on or about the aforementioned date and time, and
17 thereafter, Defendants, and each of them, combined and agreed to physically assault,
18 falsely arrest, falsely imprison, falsely book, intentionally injure and intentionally
19 cause extreme emotional suffering. Defendants carried out and perpetrated the
20 mutually supportive agreement to deprive Plaintiffs of rights secured to them under
21 the federal and California constitutions and laws of the State of California, to be free
22 from unreasonable searches and seizures, unjustified force, false arrest, criminal
23 records and unjustified mental suffering.

24 35. In furtherance of the aforesaid agreement and combination, defendants
25 VAN CLEEF, and DOES 1-20 physically assaulted, injured, and falsely arrested
26 plaintiff GABRIELLE NMITZ provided false evidence against Plaintiff to the San
27 Diego District Attorney, including a fabricated story to give the appearance of lawful
28 behavior by defendants VAN CLEEF and DOES 1-20 and unlawful conduct by

1 Plaintiff GABRIELLE NMITZ.

2 36. Defendants' felonious and unconstitutional acts and omissions as
3 hereinbefore alleged proximately caused Plaintiffs to be damaged.

4 37. As a direct and proximate result of the foregoing, Plaintiffs have
5 been damaged as recited above and demands and is entitled to the damages recited
6 in the First Cause of Action, including, but not limited to, general and punitive
7 damages (except as to Defendant CITY).

8
9 **SIXTH CAUSE OF ACTION**

10 **TORTS IN ESSENCE**
11 **(By Plaintiffs Against All Defendants)**

12 38. Plaintiffs refer to and replead each and every allegation contained in
13 paragraphs 1 through 37 of this complaint, and by this reference incorporates the
14 same herein and makes each a part hereof.

15 39. Defendants and each of them, owed to Plaintiffs non-consensual duties
16 set forth in California Penal Code Sections 118.1 (false police report by peace
17 officer), 148.5 (false report of a crime to law enforcement), 134 (preparing false
18 evidence), 132 (offering false evidence), 127 (subornation of perjury), 137 (induce
19 false testimony), 147 (willful oppression and inhumanity to a prisoner), 149
20 (felonious excessive force by a peace officer); 182(1) (conspiracy to commit crime),
21 182(2) (conspiracy to obstruct justice), 240 (assault), and 242 (battery), 832.5,
22 (citizen complaint investigations required); 4024 (prompt release from custody) and
23 Government Code § 1031(d) (background investigations required.)

24 40. Defendants, and each of them, failed to abide by said non-consensual
25 duties in that Defendants, and each of them, violated the aforesaid Penal Code
26 sections.

27 41. As a direct and proximate result of the foregoing, Plaintiffs have been
28 damaged as recited above and demands and are entitled to the damages recited in the
First Cause of Action, including, but not limited to, general and punitive damages

(except as to Defendant CITY).

SEVENTH CAUSE OF ACTION

**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(By Plaintiffs Against All Defendants)**

42. Plaintiff refers to and repleads each and every allegation contained in paragraphs 1 through 41 of this complaint, and by this reference incorporates the same herein and makes each a part hereof.

43. On or about August 30, 2010 and thereafter, Plaintiffs were entitled to the duty of due care by Defendants, and each of them, including but not limited to, care, service and protection.

44. On or about said date, and thereafter, Defendants and each of them, unlawfully and illegally assaulted, arrested, illegally arrested and booked Plaintiff GABRIELLE NMITZ in the presence of her two children, ADRIANNA and NAOMI in reckless disregard for the natural consequences of their actions and the harm their behavior against GABRIELLE NMITZ, and her minor children, ADRIANNA NMITZ and NAOMI NMITZ would cause.

45. As a direct and proximate result, minor Plaintiff DANIEL JENSEN was pulled out of school by CPS, refused his right to be taken care of by his legal guardian, and placed in the Polinsky Center along with his two sisters, Plaintiffs NAOMI NMITZ and ADRIANNA NMITZ.

45. In doing the aforementioned, Defendants' conduct was intentional, outrageous, malicious, and done for the purpose of or with reckless disregard for the consequences, causing Plaintiffs to suffer emotional suffering and mental distress, physical pain, fear, anxiety, and mental anguish.

46. As a direct and proximate result of the foregoing, Plaintiffs have suffered, and continue to suffer, mental and emotional distress and is entitled to and demands damages against Defendants jointly and severally, as recited in the First

///

1 Cause of Action, including, but not limited to general and punitive damages (except
2 as to Defendant CITY).

3 **EIGHTH CAUSE OF ACTION**

4 **NEGLIGENCE**
5 **(By Plaintiffs Against All Defendants)**

6 47. Plaintiffs refer to and replead each and every allegation contained in
7 paragraphs 1 through 46 of this complaint, and by this reference incorporates the
8 same herein and makes each a part hereof.

9 48. On or about August 30, 2009 and thereafter, plaintiffs were entitled to
10 the duty of due care by Defendants and each of them.

11 49. On or about said date, Defendants, and each of them, breached the duty
12 of due care owed to plaintiffs in that defendants negligently subjected plaintiffs
13 GABRIELLE NMITZ and the minor plaintiffs, NAOMI and ADRIANNA NMITZ,
14 and DANIEL JENSEN to injury harm and damage.

15 50. In doing the aforementioned acts, defendants' breach of duty was
16 negligent, and caused plaintiffs to suffer emotional and mental distress, fear, anxiety,
17 and mental anguish.

18 51. As a direct and proximate result of the foregoing, plaintiffs have
19 suffered, and continue to suffer, mental and emotional distress and is entitled to and
20 demands damages against defendants jointly and severally, as recited in the First
21 Cause of Action, including, but not limited to general damages.

22 **NINTH CAUSE OF ACTION**

23 **NEGLIGENT EMPLOYMENT/RETENTION/SUPERVISION**
24 **(By Plaintiffs Against Defendant LANSLOWNE)**

25 52. Plaintiffs refer to and replead each and every allegation contained in
26 paragraphs 1 through 51 of this complaint, and by this reference incorporates the
27 same herein and makes each a part hereof.

28 53. On or about August 30, 2009 and for at least 7 years prior thereto,
Defendant LANSLOWNE, as an executive officer and later as CHIEF OF POLICE,

1 knew or in the exercise of due care should have known, that Defendants VAN CLEEF
2 and DOES 1-20, and each of them, had a propensity, character trait, and practice,
3 while purporting to act under color of law, for bigotry and/or violence, and/or
4 dishonesty and/or prevarication.

5 54. At all times mentioned herein, Defendant LANSDOWNE, knew or in the
6 exercise of due care should have known, that the afore described traits of character,
7 practices and propensities of Defendants, and each of them, made them unfit to serve
8 as peace officers and were likely to cause harm and injury to members of the public,
9 including plaintiffs.

10 55. Notwithstanding such knowledge, Defendant LANSDOWNE
11 negligently, carelessly and recklessly, hired, employed, retained and failed to properly
12 supervise, train and control Defendants VAN CLEEF and DOES 1-20, and each of
13 them, inclusive, as peace officers and assigned said Defendants to duties which
14 enabled each of them to make violate the law and SDPD written policies, including
15 but not limited to making illegal arrests, fabricating probable cause and crimes,
16 maliciously prosecuting innocent persons, using excessive force and covering up
17 repeated acts of police misconduct and crimes, all while purporting to act under the
18 color of law.

19 56. As a direct and proximate result of the foregoing, Plaintiffs have been
20 damaged as recited above and demands and is entitled to the damages recited in the
21 First Cause of Action, including, but not limited to, general and special damages.

22 **TENTH CAUSE OF ACTION**

23 **VIOLATIONS OF CALIFORNIA CIVIL RIGHTS ACT**
24 **(By Plaintiffs Against All Defendants)**

25 57. Plaintiffs refer to and replead each and every allegation contained in
26 paragraphs 1 through 56 of this complaint, and by this reference incorporates the
27 same herein and makes each a part hereof.

28 58. On or about the above stated dates, and sometime prior thereto,
Defendants and each of them violated Plaintiff's civil rights, guaranteed by the United

1 States Constitution, federal law, the California Constitution and the laws of the State
2 of California thereby violating California Civil Code Section 52.1(a)(b) and 51.7.

3 59. As a proximate result of the aforementioned acts of Defendants, and each
4 of them, Plaintiffs suffered damage in a sum according to proof, and is entitled to the
5 damages, statutory damages, treble damages, attorney's fees and costs provided for
6 by Civil Code sections 52 and 52.1.

7 **PRAYER**

8 WHEREFORE, Plaintiffs pray judgment against Defendants and
9 each of them, as follows:

10 **AS TO EACH CAUSE OF ACTION AS APPLICABLE**

- 11 1. For General damages according to proof;
12 2. For Special damages according to proof;
13 3. For Punitive damages as provided by law, in an amount to be proved
14 against each individual Defendant;
15 4. For attorney's fees pursuant to 42 U.S.C § 1988 and California Civil
16 Code §§52, and 52.1;
17 5. For Costs of suit;
18 6. For such other and further relief as the Court may deem proper.

19
20 DATED: October 15, 2010

By: /s/Mary Frances Prevost
Mary Frances Prevost
Attorney for Plaintiffs

PLAINTIFFS JURY DEMAND

Plaintiffs hereby demands a trial by jury.

DATED: October 15, 2009

MARY F. PREVOST

By: Mary Frances Prevost
Attorney for Plaintiffs

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

GABRIELLE NIMTZ; NAOMI NIMTZ, a minor by her Guardian ad Litem, GABRIELLE NIMTZ; ADRIANNA NIMTZ, a minor by her

(b) County of Residence of First Listed Plaintiff San Diego

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Law Offices of Mary Frances Prevost, 402 W. Broadway, Suite 950
San Diego, CA 92101

DEFENDANTS

CITY OF SAN DIEGO; SAN DIEGO POLICE DEPARTMENT;
SAN DIEGO POLICE OFFICER VAN CLEEF; SAN DIEGO

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

'10CV2166 H WMC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | |
|---|---|---|---|
| Citizen of This State | PTF <input type="checkbox"/> 1 DEF <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | PTF <input type="checkbox"/> 4 DEF <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. § 1983

Brief description of cause:
Violation of Civil Rights

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

10/15/2010

SIGNATURE OF ATTORNEY OF RECORD

/s/Mary Frances Prevost

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE